

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16401 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BHIKHABHAI GANDABHAI PATEL

Versus

DASHRATBHAI AMBALAL PATEL

Appearance:

1. Special Civil Application No. 16401 of 2004
MS TRUSHA K PATEL for Petitioner No. 1-4
MR PS PATEL for Respondent No. 1
MR PR ABICHANDANI, AGP for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/02/2005

ORAL JUDGEMENT

#. Rule. Mr.P.S.Patel waives service of rule for

respondent no. 1 and Mr.P.R.Abichandani, learned A.G.P. waives service for respondent no. 2.

#. With the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 10.06.2004 / 27.09.2004 in Revision Application no. 10 of 1998 in dismissing the same and confirming the order passed by the Collector, Gandhinagar dated 09.01.1998 as well as the order passed by the Dy.Collector, Viramgam Prant, Ahmedabad dated 19.07.1997 in quashing and setting aside the entry no. 7423 in respect of the land in question in exercise of the powers initiating R.T.S. proceedings under the Bombay Land Revenue Code and Rules made thereunder.

#. The dispute is with regard to the land bearing survey no. 659 and the said land along with the other parcel of lands was owned and occupied by the heirs of Ambalal. It is the case of the petitioner that there was oral partition and in pursuance of the said partition, entry no. 5539 was mutated in the record of rights on 16.02.1986. It is the case of the petitioner that out of the aforesaid survey no. 659 paiki undivided 2 acre and 14 gunthas of land came to be sold by the original owners to the petitioner and necessary entry no. 7423 was also mutated in the record of rights on 15.7.96. The said entry came to be certified on 28.9.96 and the Mamlatdar imposed condition to cultivate the said land jointly. The respondent no. 1 herein - Dashrathbhai, being aggrieved and dissatisfied with the aforesaid entry no. 7423 preferred R.T.S. appeal no. 34 of 1997 before the Dy.Collector, Viramgam Prant which came to be allowed by the Dy.Collector, Viramgam Prant vide order dated 19.8.97 and set aside the aforesaid entry on the ground that there is a breach of provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Being aggrieved and dissatisfied with the order of the Dy.Collector, Viramgam Prant dated 19.8.97 in quashing and setting aside the entry no. 7423, the petitioner preferred revision application / appeal before the Collector and Collector by his order dated 09.01.1998 dismissed the said revision application. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad dated 09.01.98 in dismissing the revision application and confirming the order passed by the Dy.Collector, Viramgam Prant dated 09.01.98 in R.T.S.

appeal no. 34 of 1997 by which entry no. 7423 which was in favour of the petitioner came to be set aside, the petitioner preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat. The said revision application no. 10 of 1998 came to be dismissed by the Secretary (Appeals) by his order dated 10.6.2004 / 27.09.04 confirming the order passed by both the authorities below in setting aside the entry no. 7423 which has given rise to the present petition under Article 226 / 227 of the Constitution of India.

#. Relying upon the decision of this court in the case of Evergreen Apartment Co-operative Housing Society V/s Special Secretary, Revenue Department, Gujarat State reported in 1991(1) G.L.R. 113 and the decision in the case of Janardhan D Patel V/s State of Gujarat reported in 1997 (1) G.L.R. 50, Mr.Patel learned advocate appearing for the petitioner contended that the revenue authority while exercising the powers under the Bombay Land Revenue Code would not have examined the provisions of other enactments, even though the very officer may be holding the powers under other enactments and therefore submitted that the order passed by the authority below in quashing and setting aside the entry no. 7423 on the ground that in pursuance of the transaction between the petitioner and the original land owner, there will be breach of provisions of the Act is absolutely illegal and without jurisdiction and therefore she submitted that the order passed by all the authorities be quashed and set aside.

#. Mr.P.S.Patel, learned advocate appearing for respondent no. 1 and Mr.Abichandani, learned A.G.P. for respondent no. 2 have submitted that when it is found by the concerned authority that the transaction itself is in breach of the provisions of the particular Act i.e. in the present case, it will result into the breach of the provisions of the Act, the Dy.Collector was justified in setting aside the entry no. 7423 and the same was rightly confirmed by the Collector as well as the Secretary (Appeals). It is further submitted that in fact there was no partition at all and therefore submitted to dismiss the present petition.

#. Heard the learned advocates for the parties.

#. Considering the decision of this Court in the case of Evergreen Apartment Co-operative Housing Society (supra), and the decision in the case of Janardhan D Patel (supra), the learned Single Judge of this Court (Coram :

Jayant Patel, J) by his judgment and order dated 28.9.2004 in Special Civil Application No.12547 of 2004 in the case of Jayantilal Jethalal Soni V/s State of Gujarat has held in para 8 as under.:

"8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgment, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession

of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

#. Considering the aforesaid three decisions, the following directions and the order is passed.

The orders passed by all the authorities, i.e. Dy. Collector, Viramgam Prant, Collector, Gandhinagar and Secretary (Appeals) in respect of the entry no. 7423 deserve to be modified and it is ordered that entry no. 7423 would be subject to the ultimate outcome of the proceedings to be initiated by the competent authority to the effect that whether by the transaction between the petitioner and the original land owners, there will be breach of the Act or not and necessary entry will be made on the basis of the registered Sale Deed executed between the petitioner and the original land owners and additional entry would also be made in the revenue record to the effect that the said entry no. 7423 is subject to the ultimate outcome of the proceedings that would be initiated by the competent authority for breach of the provisions of the Act. It will be open for the appropriate authority to initiate the appropriate proceedings in accordance with law and on merits under the provisions of the Act and/or any law with regard to the transaction in question i.e. the transaction between the petitioner and the original land owners for which entry no. 7423 is made and the same may be completed as early as possible preferably within a period of six

months from the date of receipt of the writ of this order and until then status-quo with regard to the revenue record in respect of the entry no. 7423 shall be maintained.

#. For the reasons stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)